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9 Attorney for Plaintiffs

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF MONTANA**
12 **GREAT FALLS DIVISION**

13 MELLA STIFFARM,) CV
14)
15 Plaintiff,)
16 vs.)
17) **COMPLAINT**
18 UNITED STATES OF AMERICA,)
19)
20 Defendant.)
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Plaintiff alleges as follows:

1. Plaintiff Mella Stiffarm is an enrolled member of the Gros Ventre tribe, a citizen of the State of Montana, and a resident of Blaine County, Montana.
2. This Court has jurisdiction over this cause of action pursuant to the Federal

1 Tort Claims Act, 28 U.S.C. 2671, *et seq.*, because the claim arises from
2 conduct of federal government agents and Plaintiff has exhausted
3 administrative remedies.
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5 3. This Court has exclusive jurisdiction over tort claims brought against the
6 United States pursuant to 28 U.S.C. § 1346(b).
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8 4. Plaintiff filed Federal Tort Claim Act claims on May 1, 2017, and the
9 Department of Health and Human Services received the claims on May 4,
10 2017. The government denied the claim on August 21, 2017, therefore
11 Plaintiff's claims are now ripe for adjudication.
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14 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(e) and 1402(b).
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16 6. On February 15, 2015, Mella Stiffarm began going to the Fort Belknap IHS
17 for what she thought was a pain in her stomach. Mella was given
18 medication by the Fort Belknap IHS health care providers and told that the
19 medication would help with her pain.
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22 7. On June 02, 2015, Mella Stiffarm went back to IHS with what she thought
23 was still pain in her stomach and right lower back pain. At IHS, Mella
24 stressed that the pain had kept getting worse since her visit in February of
25 2015. Mella was also fighting a cold at the time of the visit. The IHS health
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1 care providers gave Mella medication and told her that the medication
2 would help with her pain, and that no further testing would be needed.

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4 8. On November 06, 2015, Mella again returned to IHS for lower right flank
5 pain. Mella explained to the health care providers that the pain had still not
6 gotten any better from her previous visits. Mella suggested that perhaps
7 she should get referred out. By now Mella was feeling more and more
8 fatigued and felt like she was just not herself. Mella was given different
9 medications and sent home.
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13 9. On January 12, 2016, Mella went back to IHS for increased lower right flank,
14 abdominal, and back pain. Mella explained that it was getting harder to
15 sleep at night, that she had increasing tiredness, that she had no energy,
16 and that she just did not feel like herself. Mella asked if there were other
17 tests or something that could be done because she felt that something was
18 wrong with her health. IHS health care providers told Mella that her labs
19 looked fine, that they would try different medications on her, and that she
20 should keep taking iron supplements because she was anemic.
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25 10. On February 25, 2016, Mella returned to the IHS clinic to ask for a referral
26 to the Billings Clinic to see her GI doctor because Mella felt that something
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1 was wrong and she was not getting better. IHS health care providers wrote
2 her a referral but told her that there was no guarantee that any care at the
3 Billings Clinic would be paid for, and that Mella was better off getting back
4 on Montana Medicaid to make sure that her health care got paid for. So
5 Mella called and made an appointment with her GI doctor in Billings.
6
7 Unfortunately, Mella had to cancel her appointment twice because of
8
9 severe weather and road closures.
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- 11 11. On April 04, 2016, Mella went to the IHS Emergency Room with bladder
12 and kidney pain. Mella was given medication for a urinary tract infection.
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- 14 12. On April 29, 2016, Mella went to the IHS for lower right back pain and also
15 asked the doctor to fill out a Family Medical Leave Act form for her because
16 Mella had been taking a lot of leave days and had nearly exhausted her
17 leave time. She had been taking so much leave because she had been
18 feeling poorly, and she traveled 70 miles round trip to work five days a
19 week. IHS health care providers told Mella that it would take a long time to
20 fill out paperwork and they did not see any legitimate reason for her taking
21 leave so much other than having a stressful job. IHS health care providers
22 also told Mella to go to the labs again to recheck her iron levels because
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1 she was still anemic and nothing appeared to be working medication-wise.

2 13. On May 23, 2016, Mella went to the IHS for a follow-up on her labs and her
3 continuing fatigue. By this time Mella was tired of repeated trips to the
4 clinic and going to the lab and taking all sorts of different meds but finding
5 no relief from her pain and fatigue. However, this time the IHS health care
6 provider told her "You have too many medical problems going on here for
7 me. I think maybe you're thinking some of these symptoms up in your
8 head. Here's what we're going to do: Since I have done everything
9 medically possible to help you; we have done labs and we put you on and
10 took you off meds and nothing seems to work, therefore I think you need
11 to go and talk to behavioral health."
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13 14. Mella was shocked and taken aback that the IHS health care providers
14 would suggest that her physical symptoms were simply in her head. IHS
15 health care providers also told Mella that there was a slight increase in her
16 iron levels, so the iron supplements seemed to be working. IHS health care
17 providers also told Mella to the labs again to recheck her blood levels.
18 Mella left the Fort Belknap IHS that day extremely discouraged because the
19 IHS health care providers had told her that she was basically crazy.
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1 Regardless, Mella continued to soldier on making it through her work day,
2 even though she was extremely fatigued.

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4 15. On June 30, 2016, Mella went to her GI doctor in Billings. Mella explained
5 to the doctor her continuing symptoms and what she had been going
6 through at the IHS. Her GI doctor ordered a CT-Scan for the following week.
7
8 Mella went back to the Billings Clinic on July 05, 2016, for a CT-Scan. At 7:45
9 the next morning, her GI doctor from the Billings Clinic called and told
10 Mella that the CT-Scan showed a mass in her right kidney. The doctor
11 referred Mella to the urology department for an urgent appointment.
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14 16. On July 12, 2016, Mella went to the Billings Clinic urology department,
15 where she was informed that the CT-scan revealed that she had cancer.
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17 Surgery was scheduled for August 5, 2016 to remove part of her cancerous
18 right kidney.
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20 17. On August 6, 2016, during the surgery, doctors determined that all of
21 Mella's right kidney had to be removed to contain the cancer. Mella stayed
22 in the hospital until August 10, 2016.
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25 18. On September 08, 2016, Mella returned to Billings for a post-op. Her
26 doctors informed her that everything looked good for her recovery.
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- 1 19. On September 12, 2016 Mella attempted to return to work, but was
2 eventually forced to resign for medical reasons on November 04, 2016.
3
- 4 20. On December 07, 2016, Mella returned to the Billings Clinic for follow up,
5 where doctors informed her that she was cancer-free.
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- 7 21. In July and August of 2017, Mella again began experiencing kidney-area
8 pain.
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- 10 22. The failure of IHS health care providers to timely diagnose and treat Mella's
11 condition, or to refer Mella to appropriate experts for care, was a violation
12 of the standard of care. The failure to timely diagnose and treat Mella's
13 condition allowed the cancer to develop and spread and eventually
14 required the removal of Mella's right kidney.
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- 16 23. IHS health care providers were negligent and violated the standard of care
17 in failing to properly assess and properly treat Mella's condition upon her
18 presentations to the IHS from February of 2015 through June of 2016. The
19 failure to assess, treat, and refer Mella in a timely manner caused her
20 condition to deteriorate.
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- 22 24. As a direct and proximate result of each of the acts and omissions of the
23 IHS and IHS health care providers alleged in this Complaint, Mella's health
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1 conditions were exacerbated, and she suffered severe and painful injuries
2 and that required extensive treatment, including the removal of her right
3 kidney.
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7 **WHEREFORE**, Plaintiff demands judgment against the Defendant as follows:

- 8 1. For judgment in such amounts as shall be proven at the time of trial.
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10 2. For an award of attorney's fees and costs as provided by any
11 applicable provision of law.
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13 3. For such other and further relief as the Court deems just and
14 equitable.
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16 DATED this 25th day of August, 2017.
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18 /s/ Timothy M. Bechtold
19 BECHTOLD LAW FIRM, PLLC
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